

ESTTA Tracking number: **ESTTA157869**Filing date: **08/20/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Kathleen Hiraga		
Entity	Individual	Citizenship	UNITED STATES
Address	Box 1985 Santa Monica, CA 90406-1985 UNITED STATES		

Attorney information	Don Thornburgh Don Thornburgh Law Corporation 466 Foothill Blvd. #220 La Canada Flintridge, CA 91011 UNITED STATES uspto@donthornburgh.com Phone:818-790-6547
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Registration Subject to Cancellation

Registration No	3125129	Registration date	08/01/2006
Registrant	Arena, Sylvester J. PO Box 3570 Paso Robles, CA 93447 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2003/11/01 First Use In Commerce: 2003/11/01
All goods and services in the class are cancelled, namely: Fertilizers, soil conditioners and soil amendments for domestic use

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	78632995	Application Date	05/19/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GARDEN ORGANICS		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	<p>Class 031. First use: First Use: 2004/02/20 First Use In Commerce: 2004/02/20 Agricultural and horticultural products, namely, living plants, plant seeds, and seedlings</p> <p>Class 041. First use: First Use: 2004/02/20 First Use In Commerce: 2004/02/20 Educational services, namely, conducting workshops and seminars in the fields of methods for growth and maintenance of edible herbs, flowers, vegetables and fruits, the design and implementation of organic culinary beds, nutrition, recipes and distributing course material in connection therewith</p>

Attachments	<p>78632995#TMSN.jpeg (1 page)(bytes)</p> <p>Petition to Cancel Reg. No. 3125129 Aug 20, 2007.pdf (2 pages)(14111 bytes)</p>
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Signature	/don thornburgh/
Name	Don Thornburgh
Date	08/20/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 3125129
For the mark "Garden Organics"
Date registered: August 1, 2006

Cancellation No. _____

Kathleen Hiraga, an individual

v.

Sylvester J. Arena, an individual

PETITION TO CANCEL

Petitioner:

Kathleen Hiraga, an individual
P.O. Box 1985
Santa Monica CA 90406-1985

To the best of petitioner's knowledge, the name and address of the current owner of the registration is Sylvester J. Arena ("Respondent"), whose address, per the current records of the USPTO is P.O. Box 3570, Paso Robles, California 93447.

The above-identified petitioner ("Petitioner") believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

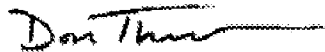
The grounds for cancellation are as follows:

- (1) Respondent filed application serial number 78/608724 for "Garden Organics" in international class 001, claiming "Fertilizers, soil conditioners and soil amendments for domestic use".
- (2) Petitioner has filed application serial number 78/632995 for "Garden Organics" in international class 031, claiming "Agricultural and horticultural products, namely, living plants, plant seeds, and seedlings" and in class 041, claiming "Educational services, namely, conducting workshops and seminars in the fields of methods for growth and maintenance of edible herbs, flowers, vegetables and fruits, the design and

implementation of organic culinary beds, nutrition, recipes and distributing course material in connection therewith".

- (3) The Examining Attorney has cited Respondent's registration as the basis for a Section 2(d) refusal of Petitioner's application for registration.
- (4) The Examining Attorney reviewing Petitioner's application to register its mark has stated that "The marks of the parties are similar in appearance, sound, connotation, and commercial impression, because they are identical. Therefore the similarities in the elements that exist are sufficient to find a likelihood of confusion."
- (5) On information and belief, Petitioner asserts that Respondent fraudulently obtained registration of the mark because Respondent had not used the mark in commerce (as defined by the Act) on the date indicated on Respondent's application.
- (6) On information and belief, Petitioner asserts that Respondent is not using the mark in commerce and has ceased operations of the associated business on or about May 31, 2006.
- (7) Petitioner will be damaged if Respondent's registration is not cancelled. Respondent's use of its mark in commerce could create a likelihood of confusion with Petitioner's use of its mark.
- (8) Accordingly, Petitioner respectfully requests that Respondent's registration be cancelled.
- (9) Payment in the amount of \$300.00 is enclosed in payment of the required filing fee.

By: _____



Don Thornburgh – Attorney for Petitioner
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Date: August 20, 2007